

Request for Qualifications

Mississippi State Workforce Investment Board

RFQ NO. SWIB-01-1

Request for Qualifications (RFQ) -01-1

The Mississippi State Workforce Investment Board (SWIB) is hereby issuing a request for qualifications to provide executive, managerial, and administrative leadership to carry out the directives of the SWIB. This RFQ will be used to select an experienced and qualified Executive Director for the SWIB.

The Mississippi SWIB will receive responses from individuals having experience and qualifications in the area identified in the solicitation.

INVITATION: Written responses subject to the conditions herein stated and attached hereto for furnishing the services as described in this solicitation for the Mississippi SWIB will be received at 1235 Echelon Parkway, Jackson, MS 39213 until Friday, February 20, 2014 at 2:00 p.m. local time. Responses may also be submitted electronically to swib@mdes.ms.gov no later than Friday, February 20, 2015 at 2:00 p.m. local time.

SELECTION: The SWIB Executive Committee shall review and evaluate all responses. The Executive Committee will have only the response to the solicitation to review. The Chairman of the SWIB shall make the selection of the finalist in accordance with the authority given to the Chairman by the SWIB.

MISSISSIPPI SWIB
1235 Echelon Parkway, Jackson, Mississippi 39213

1.0 SPECIFICATIONS, TERMS AND CONDITIONS FOR PROFESSIONAL CONSULTING SERVICES

1.1 General Statement:

The Mississippi SWIB (hereafter sometimes “SWIB”) is desirous of securing the services of a professional consultant to serve as Executive Director to the SWIB. An original and five (5) copies of the statement of qualifications and all attachments (six (6) copies total) shall be signed and submitted in a sealed envelope or package to *SWIB-01, Procurement & Other Services, 1235 Echelon Parkway, Jackson, MS 39213* no later than two o’clock p.m. on Friday, February 20, 2015. Responses may also be submitted electronically to swib@mdes.ms.gov no later than Friday, February 20, 2015 at 2:00 p.m. local time.

1.2 Detailed Minimum Specifications:

The Executive Director position provides executive, managerial, and administrative leadership to carry out the directives of the Mississippi SWIB. This position is responsible for administering all procedures, programs, and activities of the Board. The primary purpose is to assist the Board in developing its strategic vision and planning; oversee and manage the implementation of specific Board initiatives; develop and facilitate the functioning of community partnerships which advance the Board’s goals; maintain relationships with Federal, State and local funding sources; and assure an adequate flow of information, including performance indicators, to assist the Board’s oversight and decision-making processes.

For consideration, responses must contain evidence of experience and abilities related to the proposed service.

- (1) Assist the SWIB in developing its strategic vision and oversee the implementation of initiatives and activities to achieve the vision.
- (2) Negotiate strategic partnerships and alliances, convene key stakeholders, and build and manage relationships with key stakeholders related to workforce and business development including local chambers of commerce, educational institutions, community and faith based organizations, private and non-profit organizations, employer trade associations, organized labor, economic development organizations, local and state government and other organizations to promote awareness and increase local involvement in workforce development.
- (3) Work with the SWIB to coordinate and generate involvement and commitment to ensure SWIB programs are successful and state and federal responsibilities are achieved in compliance with applicable state and federal laws. Work with SWIB to fulfill all federal mandates as prescribed in the Workforce Innovation and Opportunity Act.

- (4) Initiate and oversee activities to promote and build investment in the work and accomplishments of the SWIB and establish a clearinghouse of information on workforce issues.
- (5) Conduct oversight of all workforce development related policy, research, analysis, and report on legislative issues and implement policy directives of the SWIB.
- (6) Work with and coordinate the SWIB participation in the Integrated Performance Evaluation Measurement system with the partners and nSPARC at Mississippi State University.
- (7) Develop, initiate, and implement workforce development initiatives that benefit the State of Mississippi.
- (8) Initiate continuous analysis and assessment of all workforce development programs in MS and to coordinate these activities.
- (9) Ensure all activities of the SWIB are conducted in a professional manner that positively represents the Governor of the State of Mississippi.

The Executive Director works at the direction of the Chairman of the SWIB, the SWIB Executive Committee, and the SWIB and is subject to review by and through observation of results achieved. The SWIB maintains offices at 1235 Echelon Parkway, Jackson, Mississippi and services of the Executive Director are to be provided in the Jackson area.

The period of performance of this service is three years. The contract may be renewed at the discretion of the Board upon written notice to the contractor at least 60 days prior to the contract anniversary date for a period of 2 years under the same prices, terms, and conditions as the original contract.

2.0 CONSULTANT'S WRITTEN STATEMENT OF QUALIFICATIONS SHALL CONTAIN THE FOLLOWING MINIMUM INFORMATION: Each page of the Statement of Qualifications and all attachments shall be identified with the name of the responder.

- (1) A signed cover letter expressing interest; and
- (2) a statement of qualifications in the form of a resume' listing abilities, qualifications and experience.

3.0 INSURANCE REQUIREMENTS

The successful offeror/proposer must be able to maintain general liability, car insurance, and errors and omissions/professional liability coverage in the amount of \$250,000 occurrence; and offer proof of such coverage. Should the certificate expire during the term of the contract, it is the responsibility of the vendor to provide copies of the current insurance certificate.

4.0 RENEWAL OF CONTRACTS

The contract may be renewed at the discretion of the SWIB upon written notice to the contractor at least 60 days prior to the contract anniversary date for a period of two years under the same prices, terms, and conditions as in the original contract.

5.0 COMPENSATION FOR SERVICES WILL BE IN THE FORM OF A FIRM FIXED PRICE AGREEMENT.

6.0 REJECTION OF STATEMENT OF QUALIFICATIONS

Statement of qualifications that do not conform to the requirements set forth in this RFQ may be rejected by SWIB. Statement of qualifications may be rejected for reasons, which include, but are not limited to, the following:

- (1) the statement of qualifications contains unauthorized amendments to the requirements of the RFQ;
- (2) the statement of qualifications is conditional;
- (3) the statement of qualifications is incomplete or contains irregularities which make the Statement of qualifications indefinite or ambiguous;
- (4) the statement of qualifications is received late;
- (5) the statement of qualifications is not signed by an authorized representative of the party;
and
- (6) the statement of qualifications contains false or misleading statements or references.

7.0 ACCEPTANCE OF STATEMENT OF QUALIFICATIONS

SWIB reserves the right, in its sole discretion, to waive minor irregularities in statement of qualifications. A minor irregularity is a variation of the RFQ, which does not affect the price of the statement of qualifications, or give one party an advantage or benefit not enjoyed by other parties, or adversely impact the interest of SWIB. Waivers, when granted, shall in no way modify the RFQ requirements or excuse the party from full compliance with the RFQ specifications and other contract requirements, if the party is awarded the contract.

8.0 DISPOSITION OF STATEMENT OF QUALIFICATIONS

All submitted statements of qualifications become the property of the SWIB.

9.0 NEGOTIATION

The selection will be made based on the best combination of experience and qualifications. Discussions may be conducted with responders who submit statement of qualifications determined to be reasonably susceptible of being selected for award. The SWIB Executive Committee will negotiate the terms of the contract with the selected finalist for Executive Director.

10.0 RFQ DOES NOT CONSTITUTE ACCEPTANCE OF OFFER

The release of the Request for Qualifications does not constitute an acceptance of any offer, nor does such release in any way obligate SWIB Executive Committee to execute a contract with any other party. The final decision to execute a contract with any party rests solely with the Chairman of the SWIB in accordance with authority given to the Chairman by the SWIB.

11.0 EXCEPTIONS AND DEVIATIONS

Responders taking exception to any part or section of the solicitation shall indicate such exceptions in the Statement of qualifications and shall be fully described. Failure to indicate any exception will be interpreted as the offeror's intent to comply fully with the requirements as written. Conditional or qualified offers, unless specifically allowed, shall be subject to rejection in whole or in part.

12.0 NONCONFORMING TERMS AND CONDITIONS

A statement of qualifications that includes terms and conditions, which do not conform to the terms, and conditions in the Request for Qualifications is subject to rejection as non-responsive. SWIB reserves the right to permit the responder to withdraw nonconforming terms and conditions from its statement of qualifications prior to a determination by the SWIB of non-responsiveness based on the submission of nonconforming terms and conditions.

13.0 STATEMENT OF QUALIFICATIONS ACCEPTANCE PERIOD

The statement of qualifications shall be signed and submitted in a sealed envelope or package to *SWIB-01, Procurement & Other Services, 1235 Echelon Parkway, Jackson, MS 39213* no later than two o'clock p.m. on Friday, February 20, 2015. The statement of qualifications may also be submitted to swib@mdes.ms.gov and must be received by Friday, February 20, 2015 no later than 2:00 p.m. Timely submission of the statement of qualifications is the responsibility of the responder. Responses received after the specified time shall be rejected and returned to the responder unopened.

14.0 EXPENSES INCURRED IN PREPARING OFFERS

SWIB accepts no responsibility for any expense incurred by the offeror in the preparation and presentation of an offer. Such expenses shall be borne exclusively by the responder.

15.0 PROPRIETARY INFORMATION

The responder should mark any and all pages of the statement of qualifications considered to be proprietary information, which may remain confidential in accordance with Section 25-61-9 and 79-23-1 of the Mississippi Code. Any pages not marked accordingly will be subject to review by the general public after award of the contract. Requests to review the proprietary information will be handled in accordance with applicable legal procedures.

16.0 ADDITIONAL INFORMATION

Questions about this Request for Qualifications must be submitted via email to swib@mdes.ms.gov. Responders are cautioned that any statements made by the contact person that materially change any portion of the Request for Qualifications shall not be relied upon unless subsequently ratified by a formal written amendment to the Request for Qualifications.

17.0 DEBARMENT

By submitting a statement of qualifications, the responder certifies that it is not currently debarred from submitting bids for contracts issued by any political subdivision or agency of the state of Mississippi and that it is not an agent of a person or entity that is currently debarred from submitting bids for contracts issued by any political subdivision or agency of the state of Mississippi.

18.0 REQUIRED CLAUSES FOR PROCUREMENT

18.1 Acknowledgement of Amendments

Responders shall acknowledge receipt of any amendment to the solicitation by signing and returning the amendment with the statement of qualifications, by identifying the amendment number and date in the space provided for this purpose on the statement of qualifications form, or by letter. The acknowledgment must be received by the SWIB by the time and at the place specified for receipt of statement of qualifications.

18.2 Prospective Contractor's Representation Regarding Contingent Fees

The prospective contractor represents as a part of such contractor's bid or statement of qualifications that such contractor has/has not retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract.

18.3 E-Verification

Contractor/Seller represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act Section 71-11-1, et seq of the Mississippi Code Annotated (Supp 2008), and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify

Program. Contractor/Seller agrees to maintain records of such compliance and, upon request of the State, and approval of the Social Security Administration or Department of Homeland Security, where required, to provide a copy of each such verification to the State. Contractor/Seller further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. Contractor/Seller understands and agrees that any breach of these warranties may subject Contractor/Seller to the following: (a) termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to Contractor/Seller by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such termination/cancellation, Contractor/Seller would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

18.4 Payment

The contractor agrees to accept all payments in United States currency. SWIB agrees to make payments monthly.

SWIB has the right to deny all or any portion of payment to the contractor, based upon any of the following:

- Failure to comply with any Agreement provision, all of which are deemed to be material;
- Failure to comply with applicable laws, rules, policies, or procedures;
- Failure to resolve costs disallowed under this or any separate SWIB Agreement; and
- Failure to repay amounts otherwise owed to SWIB.

The SWIB may at its sole discretion, require the Contractor to submit invoices and supporting documentation electronically at any time during the term of this Agreement.

18.5 Representation Regarding Gratuities

The Contractor represents that it has not offered, given, or agreed to give any employee or former employee, or to solicited, demanded, accepted, or agreed to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request associated with this Agreement.

19.0 STANDARD TERMS AND CONDITIONS WHICH COULD BE INCLUDED IN ANY CONTRACT AWARDED FROM THIS RFQ NOTE: THE SWIB RESERVES THE RIGHT TO EXPAND OR OTHERWISE ADD TERMS AND CONDITIONS.

19.1 Applicable Law

The contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws provisions, and any litigation with respect thereto

shall be brought in the courts of the state. The contractor shall comply with applicable federal, state, and local laws and regulations.

19.2 Availability of Funds

It is expressly understood and agreed that the obligation of the SWIB to proceed under this agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of the agreement are, at anytime, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to the state, the SWIB shall have the right upon ten (10) working days written notice to the contractor, to terminate this agreement without damage, penalty, cost or expenses to the SWIB of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

19.3 Confidentiality

The contractor shall agree to assure that no information, documents or other material provided to or prepared by the contractor deemed confidential by SWIB pursuant to state and federal privacy laws, shall be made available to any person or organization without the prior approval of SWIB. Any liability resulting from the wrongful disclosure of confidential information on the part of the contractor shall rest with the contractor.

19.4 Stop Work Order

(1) *Order to Stop Work.* The SWIB, may, by written order to the Contractor at any time, and without notice to any surety, require the Contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding 90 days after the order is delivered to the Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the SWIB shall either:

(a) cancel the stop work order; or,

(b) terminate the work covered by such order as provided in the 'Termination for Default Clause' or the 'Termination for Convenience Clause' of this contract.

(2) *Cancellation or Expiration of the Order.* If a stop work order issued under this clause is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Contractor price, or both, and the contract shall be modified in writing accordingly, if:

(a) the stop work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and,

(b) the Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the SWIB decides that the facts justify such action,

any such claim asserted may be received and acted upon at any time prior to final payment under this contract.

(3) *Termination of Stopped Work.* If a stop work order is not cancelled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.

(4) *Adjustments of Price.* Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract.

19.5 Compliance with Laws

The Contractor understands that the SWIB is an equal opportunity employer and therefore maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, or any other consideration made unlawful by federal, State, or local laws. All such discrimination is unlawful and the Contractor agrees during the term of the agreement that the Contractor will strictly adhere to this policy in its employment practices and provision of services. The Contractor shall comply with, and all activities under this agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.

19.6 Anti-Assignment/Subcontracting

The Contractor acknowledges that it was selected by the SWIB to perform the services required hereunder based, in part, upon the Contractor's special skills and expertise. The Contractor shall not assign, subcontract or otherwise transfer this agreement in whole or in part without the prior written consent of the SWIB, which the SWIB may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by the SWIB of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of the State in addition to the total fixed price agreed upon in this agreement. Subcontracts shall be subject to the terms and conditions of this agreement and to any conditions of approval that the SWIB may deem necessary. Subject to the foregoing, this agreement shall be binding upon the respective successors and assigns of the parties.

19.7 Approval

It is understood that the Contract is void and no payment shall be made in the event that the SWIB does not approve this contract.

19.8 Attorneys' Fees and Expenses

Subject to other terms and conditions of this agreement, in the event the Contractor defaults in any obligations under this agreement, the Contractor shall pay to the SWIB all costs and expenses (including, without limitation, investigative fees, court costs, and attorneys' fees) incurred by the SWIB in enforcing this agreement or otherwise reasonably related thereto. Contractor agrees that under no circumstances shall the customer be obligated to pay any attorneys' fees or costs of legal action to the Contractor.

19.9 Authority to Contract

Contractor warrants (a) that it is a validly organized business with valid authority to enter into this agreement; (b) that it is qualified to do business and in good standing in the State of Mississippi; (c) that entry into and performance under this agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind, and (d) notwithstanding any other provision of this agreement to the contrary, that there are no existing legal proceedings or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this agreement.

19.10 Change in Scope of Work

The SWIB may order changes in the work consisting of additions, deletions, or other revisions within the general scope of the contract. No claims may be made by the Contractor that the scope of the project or of the Contractor's services has been changed, requiring changes to the amount of compensation to the Contractor or other adjustments to the contract, unless such changes or adjustments have been made by written amendment to the contract signed by the SWIB and the Contractor.

If the Contractor believes that any particular work is not within the scope of the project, is a material change, or will otherwise require more compensation to the Contractor, the Contractor must immediately notify the SWIB in writing of this belief. If the SWIB believes that the particular work is within the scope of the contract as written, the Contractor will be ordered to and shall continue with the work as changed and at the cost stated for the work within the scope.

19.11 Failure to Deliver

In the event of failure of the Contractor to deliver services in accordance with the contract terms and conditions, the SWIB, after due oral or written notice, may procure the services from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the SWIB may have.

19.12 Failure to Enforce

Failure by the SWIB at any time to enforce the provisions of the contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the contract or any part thereof or the right of the SWIB to enforce any provision at any time in accordance with its terms.

19.13 Force Majeure

Each party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its Subcontractors. Such acts shall include without limitation acts of God, strikes, lockouts, riots, acts or war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters (the "Force Majeure Events"). When such a

cause arises, the Contractor shall notify the SWIB immediately in writing of the cause of its inability to perform; how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to Force Majeure Events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless the SWIB determines it to be in its best interest to terminate the agreement.

19.14 Indemnification

To the fullest extent allowed by law, the Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the SWIB, Board Members, officers, employees, agents, and representatives, and the State of Mississippi from and against all claims, demands, liabilities, suits, actions damages, losses, and costs of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, and attorneys' fees, arising out of or caused by the Contractor and/or its partners, principals, agents, employees and/or Subcontractors in the performance of or failure to perform this agreement. In the State's sole discretion, the Contractor may be allowed to control the defense of any such claim, suit, etc. In the event the Contractor defends said claim, suit, etc., the Contractor shall use legal counsel acceptable to the SWIB; the Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and the SWIB shall be entitled to participate in said defense. The Contractor shall not settle any claim, suit, etc. without the SWIB's concurrence, which the SWIB shall not unreasonably withhold.

19.15 Independent Contractor Status

The Contractor shall, at all times, be regarded as an independent contractor and shall at no time act as an agent for the SWIB. Nothing contained herein shall be deemed or construed by the SWIB the Contractor, or any third party as creating the relationship of principal and agent, master and servant, partners, joint ventures, employer and employee, or any similar such relationship between the SWIB and the Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the SWIB or the Contractor hereunder, creates or shall be deemed to create a relationship other than the independent relationship of the SWIB and the Contractor. Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the State. Neither the Contractor nor its employees shall, under any circumstances, be considered servants, agents or employees of the SWIB; and the Mississippi Department of Employment Security shall be at no time legally responsible for any negligence or other wrongdoing by the Contractor, its servants, agents, or employees. The SWIB shall not withhold from the contract payments to the Contractor any federal or State unemployment taxes, federal or State income taxes, Social Security tax, or any other amounts for benefits to the Contractor. Further, the SWIB shall not provide to the Contractor any insurance coverage or other benefits, including Workers' Compensation, normally provided by the State for its employees.

19.16 No Limitation of Liability

Nothing in this Agreement shall be interpreted as excluding or limiting any tort liability of the Contractor for harm caused by the intentional or reckless conduct of the Contractor or for damages incurred through the negligent performance of duties by the Contractor or the delivery of products that are defective due to negligent construction.

19.17 Notices

All notices required or permitted to be given under this agreement must be in writing and personally delivered or sent by certified United States mail, postage prepaid, return receipt requested, to the party to whom the notice should be given at the address set forth below. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

For the Contractor: *name, title, contractor, address*

For the SWIB: *Jay Moon, Chairman, SWIB, 1235 Echelon Parkway, Jackson, MS 39213*

19.18 Oral Statements

No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this contract. All modifications to the contract must be made in writing by the SWIB.

19.19 Ownership of Documents and Work Papers

The SWIB shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, created in connection with the contract services which are the subject of this Agreement, except for the Contractor's internal administrative and quality assurance files and internal project correspondence. The Contractor shall deliver such documents and work papers to SWIB upon termination or completion of the Agreement. The foregoing notwithstanding, the Contractor shall be entitled to retain a set of such work papers for its files. Contractor shall be entitled to use such work papers only after receiving written permission from SWIB and subject to any copyright protections.

19.20 Record Retention and Access to Records

Provided the Contractor is given reasonable advance written notice and such inspection is made during normal business hours of the Contractor, the SWIB or any duly authorized representatives, shall have unimpeded, prompt access to any of the Contractor's books, documents, papers, and/or records which are maintained or produced as a result of the contract for the purpose of making audits, examinations, excerpts, and transcriptions. The Contractor shall retain all records related to this Agreement for three (3) years after final payment is made under this Agreement and all pending matters are closed. However, if any audit, litigation or other action arising out of or related in any way to this contract is commenced before the end of the three (3) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the three (3) year period, whichever is later.

19.21 Recovery of Money

Whenever, under the contract, any sum of money shall be recoverable from or payable by the Contractor to SWIB, the same amount may be deducted from any sum due to the Contractor under the contract or under any other contract between the Contractor and SWIB. The rights of SWIB are in addition and without prejudice to any other right SWIB may have to claim the

amount of any loss or damage suffered by SWIB on account of the acts or omissions of the Contractor.

19.22 SWIB Property

Contractor will be responsible for the proper custody and care of any SWIB-owned property furnished for Contractor's use in connection with the performance of this agreement. Contractor will reimburse the SWIB for any loss or damage, normal wear and tear excepted.

19.23 Termination for Convenience

(1) *Termination.* The SWIB may, when the interests of the SWIB so require, terminate this contract in whole or in part, for the convenience of the SWIB. The SWIB shall give written notice of the termination to the Contractor specifying the part of the contract terminated and when termination becomes effective.

(2) *Contractor's Obligations.* The Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the Contractor will stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The SWIB may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the SWIB. The Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

19.24 Termination for Default

(1) *Default.* If the Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract, or any extension thereof otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the SWIB may notify the Contractor in writing of the delay or nonperformance and if not cured in ten days or any longer time specified in writing by the SWIB, the SWIB may terminate the Contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the SWIB may procure similar supplies or services in a manner and upon terms deemed appropriate by the SWIB. The Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

(2) *Contractor's Duties.* Notwithstanding termination of the contract and subject to any directions from the SWIB, the Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the Contractor in which the SWIB has an interest.

(3) *Compensation.* Payment for completed services delivered and accepted by the SWIB shall be at the contract price. The SWIB may withhold from amounts due the Contractor such sums as the SWIB deems to be necessary to protect the SWIB against loss because of outstanding

liens or claims of former lien holders and to reimburse the SWIB for the excess costs incurred in procuring similar goods and services.

(4) *Excuse for Nonperformance or Delayed Performance.* Except with respect to defaults of Subcontractors, the Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if the Contractor has notified the SWIB within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a Subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the Contractor shall not be deemed to be in default, unless the services to be furnished by the Subcontractor were reasonably obtainable from other sources in sufficient time to permit the Contractor to meet the contract requirements. Upon request of the Contractor, the SWIB shall ascertain the facts and extent of such failure, and, if SWIB determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the Contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the SWIB under the clause entitled "Termination for Convenience". (As used in this Paragraph of this clause, the term "Subcontractor" means Subcontractor at any tier).

(5) *Erroneous Termination for Default.* If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the SWIB, be the same as if the notice of termination had been issued pursuant to such clause.

(6) *Additional Rights and Remedies.* The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

19.25 Third Party Action Notification

Contractor shall give SWIB prompt notice in writing of any action or suit filed, and prompt notice of any claim made against Contractor by any entity that may result in litigation related in any way to this agreement.

19.26 Unsatisfactory Work

If at any time during the contract term, the service performed or work done by the Contractor is considered by SWIB to create a condition that threatens the health, safety, or welfare of the citizens and/or employees of the State of Mississippi, the Contractor shall, on being notified by SWIB, immediately correct such deficient service or work. In the event the Contractor fails, after notice, to correct the deficient service or work immediately, SWIB shall have the right to order the correction of the deficiency by separate contract or with its own resources at the expense of the Contractor.

19.27 Waiver

No delay or omission by either party to this agreement in exercising any right, power, or remedy hereunder or otherwise afforded by contract, at law, or in equity shall constitute an acquiescence therein, impair any other right, power or remedy hereunder or otherwise afforded by any means, or operate as a waiver of such right, power, or remedy. No waiver by either party to this agreement shall be valid unless set forth in writing by the party making said waiver. No waiver of or modification to any term or condition of this agreement will void, waive, or change any other term or condition. No waiver by one party to this agreement of a default by the other party will imply, be construed as or require waiver of future or other defaults.

19.28 Transparency

This contract, including any accompanying exhibits, attachments, and appendices, is subject to the “Mississippi Public Records Act of 1983,” codified as section 25-61-1 et seq., Mississippi Code Annotated and exceptions found in Section 79-23-1 of the Mississippi Code Annotated (1972, as amended). In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008 (MATA), codified as Section 31-7-13 of the Mississippi Code Annotated (1972, as amended). Unless exempted from disclosure due to a court-issued protective order, this contract is required to be posted to the Department of Finance and Administration’s independent agency contract website for public access. Prior to posting the contract to the website, any information identified by the Contractor as trade secrets, or other proprietary information including confidential vendor information, or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes will be redacted.

20.0 EVALUATION PROCEDURE AND FACTORS TO BE CONSIDERED IN THE EVALUATION PROCESS:

20.1 Qualifications of Offeror

The responder may be required before the award of any contract to show to the complete satisfaction of the SWIB that it is able to provide the service specified therein in a satisfactory manner. The responder may also be required to give a past history and references in order to satisfy the SWIB in regard to the offeror's qualifications. The SWIB may make reasonable investigations deemed necessary and proper to determine the ability of the offeror to perform the work, and the offeror shall furnish to the SWIB all information for this purpose that may be requested. The SWIB reserves the right to reject any offer if the evidence submitted by, or investigation of, the offeror fails to satisfy the SWIB that the offeror is properly qualified to carry out the obligations of the contract and to complete the work described therein.